



COLTON JOINT UNIFIED SCHOOL DISTRICT
1212 Valencia Drive
Colton, CA 92324

REQUEST FOR QUALIFICATIONS (RFQ)

Specialty Inspection and Materials Testing Services

April 20, 2023



REQUEST FOR QUALIFICATIONS (RFQ)

For

Specialty Inspection and Materials Testing Services

IMPORTANT INITIAL INFORMATION

Timeline:

Release of RFQ:	April 20, 2023
RFQ Questions/Clarifications Due:	April 26, 2023
RFQ Due Date:	May 4, 2023 by 4:00 PM
Selection Committee Review:	May 5 – May 12, 2023
Announcement of Short List:	May 19th, 2023

Submission:

Responses to RFQ are due at the CJUSD Facilities Department located at:

**Colton Joint Unified School District
Facilities Department
325 Hermosa Ave. Bldg. #5
Colton, CA 92324**



The Colton Joint Unified School District (“District”) is hereby requesting proposals from qualified materials inspection and testing firms to perform Specialty Inspection and Materials Testing services for projects at various District school sites. The objective of this RFQ is to obtain information that will enable the DISTRICT to pre-qualify a limited number of full-service CONSULTANT(s) that can assist the District in connection with material testing services as the District may, from time to time, require, in connection with various facilities improvement projects on an on-going basis, without the need to pre-qualify Consultants for each project. The District will allocate work to Consultants without having to request and evaluate additional information as to the Consultant’s qualifications. Pre-Qualified Consultants are in no way guaranteed to receive any work from the District; however, it is the District’s intent to look primarily to the pool of Pre-Qualified Consultants when choosing a Consultant to perform material testing and inspection services for various improvement projects for the District.

The District seeks motivated firms with a record of excellence in construction special inspection and materials testing services for K-12 projects. Local and minority firms are encouraged to apply.

Projects are scheduled to begin about June 1, 2023 and run through completion. These projects include but are not limited to:

A. Installation of New Electronic Marquees at Nine (9) District Sites

- | | |
|-----------------------|-----------------------|
| i. Alice Birney ES | vi. Sycamore Hills ES |
| ii. Cooley Ranch ES | vii. Terrace Hills MS |
| iii. Grand Terrace ES | viii. Terrace View ES |
| iv. Jurupa Vista ES | ix. Woodrow Wilson ES |
| v. Mary B. Lewis ES | |

B. Grand Terrace HS Pool Repair Project

C. San Salvador Playground Replacement & Portable Certification

D. Terrace Hills MS Fire Hydrant Installation

F. Grand Terrace ES Fire Alarm Upgrade

G. Playground Replacements at Four (4) District Sites

- | | |
|----------------------|----------------------|
| i. Alice Birney ES | iii. Terrace View ES |
| ii. Mary B. Lewis ES | iv. Rogers ES |

H. Grimes ES Toilet Building & Shade Structure Construction



The proposals shall be submitted to:

Facilities Department
Colton Joint Unified School District
325 Hermosa Ave Bldg. #5
Colton CA 92324

Proposals must be received by E-mail, mail or personal delivery in a **sealed envelope or package** no later than **May 4th, 2023 at 4:00 PM** at the office listed above. Proposals received after the established date and time will not be considered and shall be returned unopened. It is the sole responsibility of each Proposer to see that the Proposal is received by the identified deadline.

Each proposer shall submit one (1) copy of its proposal in the form identified later in this request. Proposals may be delivered via a representative of the firm or through a generally accepted mailing service such as US Postal Service, Federal Express, UPS, etc. E-mail will be acceptable. No facsimiles will be accepted.

E-mail: Brian Liabeuf -- brian_liabeuf@cjud.net,

CC: owen_chang@cjud.net,
diane_mendez@cjud.net and
kenny_porter@cjud.net

Disqualification

Contact between a proposing firm, a sub-consultant's firm or their representatives or agents with any member of the Board of Education or Superintendent will be grounds for immediate disqualification. All Contact must be directed to Brian Liabeuf at (909) 580-6644 or via e-mail at brian_liabeuf@cjud.net for questions and clarifications.

Firms shall be properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1, otherwise the District will not be able to enter into an agreement with the proposing firm.

Project Information

Plans for each specific project will be sent to the approved firms for pricing. Firms will be chosen based on what is in the best interest of the District.

The project duration will be specified for each project.



Scope of Services

- A. Perform the services for Material Testing and Special Inspectors in accordance with Title 24, California Code of Regulations and Instructions on Division of the State Architect, Structural Tests and Inspections form DSA 103 (as provided for each project) and the conditions included in this scope of work.
- B. Special Inspections and Materials Testing: Testing shall be performed in accordance with ASTM test methods and California test methods as appropriate. All laboratory testing shall be accomplished in a DSA approved laboratory. The Special Inspection and Materials Testing firm shall have the professional qualifications and equipment to perform, evaluate and report the results of all tests and inspections required for the Construction Special Inspection and Materials.

Testing of the contract, including but not limited to the following:

- a. Special Inspection and Materials Testing
- i. Earth work/soils inspection
 - ii. Asphaltic concrete plant inspection
 - iii. Asphaltic concrete placement inspection
 - iv. Concrete reinforcement placement inspection
 - v. Concrete reinforcement welding inspection
 - vi. Batch plant inspection
 - vii. Concrete placement inspection
 - viii. Drilled caissons
 - ix. Structural steel fabrication inspection at plant
 - x. Steel assembly/ erection inspection
 - xi. Welding inspection
 - xii. Structural steel fireproofing
 - xiii. Glued Laminated Beams – inspection at plant
 - xiv. Mill verification
 - xv. Decking
 - xvi. Stair railing systems
 - xvii. All ultrasonic testing, when required, shall be performed by inspectors with at least a UT Level certificate.
- b. Material Testing and Sampling Services
- i. Soil, Aggregate and Asphalt
 - ii. Maximum Dry Density
 - iii. Expansion Index
 - iv. R value
 - v. San Equivalent
 - vi. Sieve Analysis
 - vii. Hveem stability
 - viii. Asphalt Extraction
 - ix. Hardness and Abrasion



x. Sampling

c. Concrete

- i. Cylinder compression strength
- ii. Anchor pull out
- iii. Core extraction
- iv. Slump
- v. Air testing
- vi. Concrete cylinder sampling/ fabrication

d. Reinforcing Steel

- i. Tensile strength
- ii. Bend test
- iii. Sample and tag specimens

e. Masonry

- i. Grouted prism
- ii. Mortar compression
- iii. Grout compression
- iv. Anchor pull out

f. Masonry Block Conformance Testing

- i. Block compression
- ii. Block measurement
- iii. Block moisture/ absorption
- iv. Shrinkage
- v. Effloresce

g. Structural Steel

- i. Bolt and washer hardness
- ii. Fireproofing Density
- iii. Bolt/ bend/ tensile

C. Testing shall be performed in accordance with ASTM test The Special Inspection and Material Testing Services firm shall be certified by DSA (Division of the State Architect) for Special Inspectors and Testing Lab Facilities.

D. The firm shall be required to commit one (1) project manager who will be responsible for overseeing all testing and inspections required for the project and report to the District's Representative or the District's designated Inspector of Record ("IOR").

Required Components of Proposals

All Proposals shall address the following items in the order listed below with each section numbered either numerically or alphabetically in the document within the page limits identified. The Proposal shall be in a binder or similar presentation folder on 8 ½ x 11 paper with tabs for each section identified in a similar manner to the appropriate section.



1. Cover Letter – One (1) Page

Indicate the services the proposer is interested in responding to. Include the name, address, telephone and fax numbers, and name of the principal contact for the firm. A representative of the firm who is authorized to legally bind the firm by contract shall sign the letter.

2. Qualifications of Personnel – As Required

Identify all of the proposed Inspectors and/or Engineers from your firm and their roles. Provide resumes for each person identified including DSA class, education, training & professional certifications as applicable. Identify if you will be proposing employees or consultants, and indicate past working relationships between your firm and the identified consultants.

3. Experience Relative to District Needs/References – Two (2) Pages maximum

Provide a descriptive listing of a minimum of five (5) school projects initiated and/or completed in the last five years that are comparable to those contemplated by the District for each service your firm is proposing. Each reference should include the current name, address and telephone number of an individual at the client school district who has worked or is working closely with the firm on each of these projects.

4. Fee Schedule

Provide hourly rates including weekend and overtime rates, materials testing unit costs, reimbursable costs, minimum call out charges, truck and equipment charges, etc. that would be required to provide Testing and Inspection services to the District.

5. Other – Two (2) Pages maximum

Each firm is encouraged to provide any additional information or description of resources that the firm feels is pertinent to their qualifications and will assist the District in evaluating their ability to successfully complete the work.

Criteria for Selection

Each Proposal will be evaluated based on the following criteria:

- Overall Qualification
- Depth of Background with School Projects
- Proposed Fee Schedule
- Relevancy of Past Experience
- Quality of Past Experience
- Quality of References

Each proposal will be reviewed independently on its own merits. The District reserves the right to reject any or all RFP responses, in whole or in part and to waive any irregularities or informalities. The selection of one or more companies/individuals will be solely at the discretion of the District, acting through the Board of Trustees. The District is not obligated to explain any deficiencies in a proposal, nor to accept requests for justification from firms



not selected. The District reserves the right to award or reject a contract(s) without interviews should it deem that such an approach is in the best interest of the District. If the District deems interviews to be useful in its selection process, firms will be contacted to set up an interview time.

Modifications

No oral or telephonic modifications of any Proposal, once submitted, will be considered. However, later versions of the complete Proposal may be substituted for the original submission as long as the substitution is completed prior to the original deadline for submission of the Proposal.

Erasures

The Proposal submitted must not contain any erasures or other corrections.

Withdrawal of Proposals

Any firm may withdraw its Proposal either personally, or by written request either by mail or email at any time prior to the scheduled closing time for the receipt of proposals. If no written request is received prior to the closing time for the submission of proposals, the Proposal shall be considered valid.

Contract Requirements

The successful Proposer shall be required to execute the Inspection & Testing Agreement in substantially the same form as that attached hereto and incorporated herein. The successful Proposer shall be bound by the terms and conditions of the attached Agreement, including but not limited to the indemnification provision.

Award of Contract

The District does not guarantee an award of a contract(s) and it reserves the right to select the firm(s) that it considers to be in the best interest of the District.

The District reserves the right to accept or reject any or all proposals, to negotiate with any or all responsible submitters, and to waive any informality in the Proposal. Firms submitting proposals shall be responsible for any and all expenses that they may incur in preparing proposals.

Anti- Discrimination

It is the policy of the District that in connection with all work performed under its contracts, there shall be no discrimination against any prospective or active employee engaging in the work for a contractor because of race, color- ancestry, national origin, religious creed, sex, age, or marital status. The selected Consultant shall agree to comply with applicable Federal and California laws in this regard including, but not limited to the California Fair Employment and Housing Act. In addition, the Consultant shall agree to require similar compliance by any consultant that they might employ on the projects.



Signature

The cover letter for the Proposal must be signed in the name of the firm and must bear the signature in longhand of the person or persons duly authorized to sign the eventual contract on behalf of the firm.

All materials submitted in response to this Proposal shall become the property of the District and shall be considered a part of Public Record.

Any and all questions prior to the deadline for filing the requested Proposal should be sent to Brian Liabeuf in writing only at brian_liabeuf@cjud.net. For general information you may call (909) 580-6642.



(SAMPLE MASTER AGREEMENT)

CONSULTANT SERVICES AGREEMENT

(SPECIAL INSPECTION AND/OR TESTING SERVICES)

This AGREEMENT is made and entered into this ____ day of _____ in the year 20__ (“EFFECTIVE DATE”), by and between the _____ SCHOOL DISTRICT, hereinafter referred to as (the “DISTRICT”), and _____, hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein singularly as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

WHEREAS, the DISTRICT requires specialized inspection and/or testing services for _____ located within the DISTRICT (hereinafter referred to as the “PROJECT”);

WHEREAS, CONSULTANT shall at all times be qualified and approved by the Division of the State Architect (“DSA”) and shall at all times maintain proper qualifications, to perform the duties of and act as a testing laboratory and/or special inspector on school building construction projects and to perform the services required by this AGREEMENT; and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide its specialized testing and inspection services to the DISTRICT on the terms hereinafter set forth in this AGREEMENT;

WHEREAS, CONSULTANT declares that CONSULTANT is customarily engaged in an independently established business of the same nature as the services set forth herein and has complied with all federal, state, and local laws regarding business permits, licenses, and insurances of any kind required to carry out the said business and the tasks to be performed under this AGREEMENT; and

WHEREAS, CONSULTANT declares that CONSULTANT routinely offers CONSULTANT’s nonexclusive services to the public, and may contract with, the CONSULTANT’s own customers or clients to perform the same or similar activities set forth herein.

NOW, THEREFORE, the PARTIES hereto agree as follows:

ARTICLE I **SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT**

1. Services to be Provided by the CONSULTANT. The CONSULTANT shall provide to the DISTRICT on the terms set forth herein all the special inspection and/or testing services necessary to complete the PROJECT as required by the DSA approved Construction Documents and this AGREEMENT. The CONSULTANT’s basic services shall include those



services set forth in this AGREEMENT as well as those services articulated in the CONSULTANT's proposal which shall be attached hereto and incorporated herein as **EXHIBIT "A"** (the CONSULTANT's "PROPOSAL"). In the event of a discrepancy, inconsistency, conflict or other difference between the terms of the CONSULTANT's PROPOSAL with this AGREEMENT, the PARTIES agree that the terms of this AGREEMENT shall govern and be controlling.

2. CONSULTANT's Certifications, Representations and Warranties. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform, for the benefit of the DISTRICT, such services as are called for hereunder.

b. CONSULTANT, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and equal protection and non-discrimination laws.

c. If applicable, CONSULTANT shall be properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1 at all times during the term of this AGREEMENT.

ARTICLE II

CONSULTANT'S SERVICES AND RESPONSIBILITIES

1. The CONSULTANT shall perform all special inspections and testing services in conformance with the PROJECT's DSA approved Construction Documents, applicable codes and code references. Any references to the DSA requirements, DSA forms, documents, manuals applicable to the PROJECT shall be deemed to include and incorporate any revisions or updates thereto.

2. The CONSULTANT shall obtain a copy of the Construction Documents that were approved by the DSA for the completion of the PROJECT including, but not limited to, the DSA approved Statement of Structural Tests and Special Inspections (Form DSA 103), from the Design Professional in General Responsible Charge of the PROJECT (the "Architect/Engineer") prior to the commencement of construction on the PROJECT and shall maintain a copy of the approved DSA 103 form in the CONSULTANT's Project File for the duration of the PROJECT. The CONSULTANT shall thoroughly review and evaluate the approved DSA 103 for the PROJECT and be familiar with the required testing and special inspections program required by the DSA approved Construction Documents.



3. The CONSULTANT shall meet with the Project Inspector, the Architect/Engineer, Structural Engineer and the DISTRICT as needed throughout the completion of the PROJECT to verify, acknowledge and coordinate the special inspection and testing program required by the DSA approved Construction Documents for the PROJECT and this AGREEMENT.

4. The CONSULTANT shall prepare and submit an Interim Verified Report to the DSA, and provide a copy of such report to the Project Inspector for each of the applicable sections of the Project Inspection Cards (Form DSA 152), that are required for the completion of the PROJECT, when such sections require special inspections and/or testing prior to the Project Inspector's approval and sign off. The applicable sections of the Project Inspection Cards are as follows:

- (a) Initial Site Work and Foundations Preparation;
- (b) Vertical and Horizontal Framing;
- (c) Appurtenances;
- (d) Finish Site Work and Other Work;
- (e) Final

5. The CONSULTANT shall submit a signed Verified Report to the DSA, and provide a copy of such report to the Project Inspector, the Architect/Engineer, the Structural Engineer and the DISTRICT upon any of the following events:

- a. Within fourteen (14) days of the completion of the CONSULTANT's special inspection and/or testing work;
- b. When work on the PROJECT is suspended for a period of more than one (1) month;
- c. When the services of the CONSULTANT are terminated for any reason prior to the completion of the PROJECT; and/or
- d. In the event the DSA requests a Verified Report.

6. If CONSULTANT's work involves the in-plant inspection of relocatable buildings that are being manufactured for placement on the PROJECT site, CONSULTANT shall obtain the Project Inspection Cards from the DSA or the Architect/Engineer, as applicable, that are needed for the in-plant inspection of such relocatable building(s). The CONSULTANT shall complete the Project Inspection Cards during the in-plant completion of the relocatable building(s) as required by Title 24, the DSA 152 Manual, PR 13-01 and this AGREEMENT. The Consultant must provide the original Project Inspection Cards that are used for the in-plant inspection of the PROJECT's relocatable buildings to the Project Inspector at the time such relocatable buildings are delivered to the PROJECT site.

7. The CONSULTANT shall work under the technical direction and supervision of the Project Inspector or the Architect/Engineer as applicable. The CONSULTANT shall keep the Project Inspector, the Architect/Engineer, the Structural Engineer and the DISTRICT informed of all special inspections, testing and/or PROJECT related activities being performed by the CONSULTANT in order to ensure that all testing and special inspections required for the completion of the PROJECT are performed timely and satisfactorily. The CONSULTANT shall keep the Project Inspector, Architect/Engineer, Structural Engineer and the DISTRICT thoroughly informed as to the progress of the work by submitting detailed daily reports, in writing, to the



Project Inspector which outline the work inspected and/or tested. The CONSULTANT shall submit the detailed daily reports to the Project Inspector on the same day the inspections, testing and/or PROJECT related activities are performed and shall provide the Architect/Engineer, Structural Engineer and the DISTRICT with a copy of such reports. The CONSULTANT shall also submit daily special inspection reports in a timely manner to the Project Inspector so as not to delay the PROJECT. However, in no event shall the CONSULTANT submit a special inspection report to the Project Inspector later than fourteen (14) days from the date the special inspections are performed. The CONSULTANT shall provide a copy of each daily special inspection report to the Architect/Engineer, Structural Engineer and the DISTRICT on the day the original report is submitted to the Project Inspector.

8. In the event the CONSULTANT identifies construction and/or material deviations from the DSA approved Construction Documents in connection with the work being completed on the PROJECT, the CONSULTANT shall immediately issue a written report of such deviations to the DSA. The CONSULTANT shall provide a copy of each report to the Project Inspector, Architect/Engineer, Structural Engineer and the DISTRICT on the day the original report is submitted to the DSA.

9. If applicable, the CONSULTANT and any subcontractors (of any tier) performing work pursuant to this AGREEMENT must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with DIR and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this AGREEMENT. CONSULTANT shall be solely responsible for ensuring compliance with Labor Code section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors throughout the term of this AGREEMENT and in no event shall CONSULTANT be granted increased payment from the DISTRICT a result of CONSULTANT's efforts to maintain compliance with the Labor Code or any requirements implemented by the DIR. Failure to comply with these requirements shall be deemed a material breach of this AGREEMENT and grounds for termination for cause. If applicable, the CONSULTANT and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the DISTRICT or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

ARTICLE III **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) days written notice to the other PARTY in the event of a substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services



actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings, reports and/or other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs shall be deducted from payments to the CONSULTANT.

3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article III, Section 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by DISTRICT upon fourteen (14) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved extra services.

5. In the event the CONSULTANT is terminated, with or without cause, the CONSULTANT shall personally provide all the original Project Inspection Cards prepared or obtained by the CONSULTANT in connection with the PROJECT to the assuming DSA inspector or the DSA as directed by the DISTRICT. All original Project Inspection Cards must be provided to the DSA assuming inspector or the DSA, as applicable, within 48 hours of the effective date of the CONSULTANT's termination. Under no circumstances shall the CONSULTANT withhold any original Project Inspection Cards related to the PROJECT upon the CONSULTANT's termination. The CONSULTANT shall be responsible for any delays on the PROJECT that arise out of the CONSULTANT's failure to provide the original Project Inspection Cards to the assuming DSA inspector or the DSA as directed by the DISTRICT in accordance with this section. Upon the effective date of the CONSULTANT's termination, the CONSULTANT shall provide copies of all current Project Inspection Cards in the CONSULTANT's Project File to the DISTRICT along with any other DISTRICT PROPERTY as further described in Article IV below.

6. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to arbitration.

7. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE III OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.



ARTICLE IV
REPORTS AND/OR OTHER DOCUMENTS

1. The Project Inspection Cards, reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter the "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days.

ARTICLE V
ACCOUNTING RECORDS OF THE CONSULTANT

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

ARTICLE VI
COMPENSATION TO THE CONSULTANT

1. The DISTRICT shall compensate the CONSULTANT as follows:
 - a. The DISTRICT agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information set forth in EXHIBIT "A", inclusive of reimbursable expenses, for performing the basic services required by this AGREEMENT subject to the limitations set forth herein this Article VI, Section 1(a). In no event shall the CONSULTANT's compensation exceed _____ Dollars (\$ _____) for performing all the basic services detailed in Article II and EXHIBIT "A". CONSULTANT shall invoice costs monthly for the services provided pursuant to this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. All costs must be supported by an invoice, receipt, or other acceptable documentation.
 - b. Invoices requesting payment for Additional Services performed in accordance with Article VII below must reflect the compensation approved by the DISTRICT and include a copy of the DISTRICT's written authorization. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services and no claim by the CONSULTANT for additional compensation related to Additional Services shall be valid absent such prior written approval by the DISTRICT to proceed with such Additional Services as required by Article VII.



ARTICLE VII

ADDITIONAL CONSULTANT SERVICES

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any additional services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all additional services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such additional services. CONSULTANT shall not be entitled to any compensation for performing additional services that are not previously approved by the DISTRICT in writing. Additional services shall include:

a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents.

b. Preparing reports and other documentation and supporting data, and providing other services in connection with project modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT.

c. If the DISTRICT requests additional shifts to complete the services articulated in Article II and EXHIBIT "A" where the requests for additional shifts does not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT. The CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT.

d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

ARTICLE VIII

MISCELLANEOUS

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

b. General Liability: Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the PROJECT, except for liability



resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT;

c. Professional Liability: Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the services performed by CONSULTANT in accordance with this AGREEMENT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

d. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of Article VIII, Sections 1(a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof. With regard to the CONSULTANT's obligation to indemnify for acts of professional negligence as set forth in Article VIII, Section 1(c) above, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings.

e. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VIII, SECTION 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

f. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS



(\$1,000,000). No workers' compensation insurance will be obtained by the DISTRICT on account of CONSULTANT or CONSULTANT's employees.

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Each policy of insurance required in Article VIII, Section 2(b) above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

3. The Parties expressly understand and agree that CONSULTANT, in the performance of this AGREEMENT, is an independent contractor and not an employee, agent, joint venture, or partner of the DISTRICT. Nothing in this AGREEMENT shall be interpreted or construed as creating or establishing the relationship of employer and employee between CONSULTANT and DISTRICT or any employee or agent of CONSULTANT. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which the DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided



under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees. CONSULTANT shall fully defend and indemnify the DISTRICT from any claims, damages or any liability arising from or related to CONSULTANT or its subcontractors' failure to comply with any applicable prevailing wage laws and requirements. CONSULTANT shall be responsible for providing, at CONSULTANT's own expense, disability, unemployment, and other insurance, training, permits, business tax registration, business license, and other licenses required for CONSULTANT, CONSULTANT's employees, and CONSULTANT's subcontractors.

4. No payroll or employment taxes of any kind shall be withheld or paid by the DISTRICT with respect to payments to CONSULTANT. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, federal personal income tax, state personal income tax, state disability insurance, state unemployment insurance, social security, and Medicare.

5. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

6. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

7. This AGREEMENT shall be governed by the laws of the State of California. Venue shall be in the County of California where the DISTRICT is located.

8. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY GENERAL CONDITIONS, TERMS & CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT AS EXHIBIT "A" SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED AND APPROVED BY THE DISTRICT'S GOVERNING BOARD. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN ANY PROPOSAL, QUOTE, STATEMENT OF QUALIFICATIONS AND/OR ANY OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND ANY OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE ATTACHED TO THIS AGREEMENT AS EXHIBIT "A" BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO ONLY THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS. ALL OTHER PARTS, PROVISIONS AND/OR BOILERPLATE TERMS AND CONDITIONS IN ANY ATTACHED PROPOSAL, QUOTE, STATEMENT OF QUALIFICATIONS OR ANY OTHER SIMILAR DOCUMENT PREPARED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT.



9. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

10. Time is of the essence with respect to all provisions of this AGREEMENT.

11. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

12. The Recitals set forth at the beginning of this AGREEMENT are deemed true and correct, are hereby incorporated by reference and made a part of this AGREEMENT, and the PARTIES acknowledge and agree that they are each bound by the same.

13. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents, provisions, terms, conditions and/or information that are subject to any exclusions specifically set forth herein this AGREEMENT.

14. All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) by U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either PARTY may be changed by written notice given in accordance with the notice provisions of this Paragraph. As of the EFFECTIVE DATE and for the duration of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:

School District
Attn: <<Name>>
<< Address>>, <<City, State, Zip>>
Zip>>
Telephone:
Email:

To the CONSULTANT:

<<Name of Consultant>>
Attn: <<Name>>
<< Address>>, <<City, State,
Telephone:
Email:

15. In accordance with California Education Code Section 17604, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.



16. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either PARTY (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

17. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

18. CONSULTANT shall provide a written certification to the DISTRICT, in the form and with the content similar to Exhibit "B", that CONSULTANT has complied with the criminal background check requirements of California Education Code section 45125.1 and that none of its employees providing services pursuant to and in accordance with this AGREEMENT have been convicted of, or have an arrest pending final adjudication for, any serious or violent felony as specified in California Penal Code Section 1192.7(c) and 667.5(c), respectively. When CONSULTANT performs a criminal background check of any of its employees, CONSULTANT shall immediately provide the DISTRICT with any subsequent arrest and/or conviction information that it receives from the California Department of Justice.

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

CONSULTANT:

DISTRICT:

_____ District

By: _____

By: _____

APPROVED AS TO FORM:

Atkinson, Andelson, Loya, Ruud & Romo

Jesus R. Gonzales, Jr., Esq.
Attorneys for _____ District



EXHIBIT "A"

(INSERT CONSULTANT'S PROPOSAL)



EXHIBIT “B”

CONSULTANT’S CERTIFICATION REGARDING BACKGROUND CHECKS

Pursuant to Education Code Section 45125.1, CONSULTANT hereby certifies to the DISTRICT that it has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the DISTRICT, pursuant to this AGREEMENT, and CONSULTANT certifies that none of its employees have been convicted of or have an arrest pending final adjudication for any serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, below is a list of the names of the employees of the undersigned who may come in contact with pupils:

[INSERT LIST OF NAMES]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date _____, 20____

[Name of Consultant]

By its: _____